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DRAFT REPORT OF THE INTERNATIONAL LAW COMMISSION ON THE WORK OF ITS FIFTIETH SESSION

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CHAPTER VIII

NATIONALITY IN RELATION TO THE SUCCESSION OF STATES

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A. Introduction

1. At its forty-fifth session (1993), the Commission decided to include in its agenda the topic entitled "State succession and its impact on the nationality of natural and legal persons". 1/ The General Assembly endorsed the Commission's decision in paragraph 7 of resolution 48/31 of 9 December 1993, on the understanding that the final form to be given to the work on the topic shall be decided after a preliminary study is presented to the Assembly. At its forty-sixth session (1994), the Commission appointed Mr. Václav Mikulka Special Rapporteur for the topic. 2/

2. At its forty-seventh (1995) and forty-eighth (1996) sessions, the Commission considered the Special Rapporteur's first and second reports. 3/ The Commission established at its forty-seventh session a Working Group entrusted with the mandate to identify issues arising out of the topic, categorize those issues which are closely related thereto, give guidance to the Commission as to which issues could be most profitably pursued given contemporary concerns and present the Commission with a calendar of action. 4/ The Working Group completed its task as regards the preliminary study of the topic at the forty-eighth session.

3. The Commission decided, at the forty-eighth session, to recommend to the General Assembly that it take note of the completion of the preliminary study of the topic and request the Commission to undertake the substantive study of the topic entitled "Nationality in relation to the succession of States" in accordance with the proposed plan of action, which, inter alia, envisaged: (a) that consideration of the question of the nationality of natural persons will be separated from that of the nationality of legal persons and that priority will be given to the former; and (b) that the decision on how to proceed with respect to the question of the nationality of legal persons will be taken upon completion of the work on the nationality of natural persons and

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1/ Official Records of the General Assembly, Forty-eighth session, Supplement No. 10 (A/48/10), para. 440.

2/ Ibid., Forty-ninth session, Supplement No. 10 (A/49/10), para. 383.

3/ Respectively document A/CN.4/467 and A/CN.4/474 and Corr.1 and Corr.2 (Chinese only).

4/ Official Records of the General Assembly, Fiftieth session, Supplement No. 10 (A/50/10), para. 147.

in light of the comments that the General Assembly may invite States to submit to it on the practical problems raised by a succession of States in this field. 5/ The General Assembly endorsed the Commission's recommendations in paragraph 8 of resolution 51/160 of 16 December 1996.

4. At its forty-ninth session (1997), the Commission considered the Special Rapporteur's third report, 6/ containing a set of draft articles with commentaries on the question of the nationality of natural persons in relation to the succession of States. At the same session, the Commission adopted on first reading a draft preamble and a set of 27 draft articles on Nationality of natural persons in relation to the succession of States. 7/ The General Assembly, in paragraph 2 (a) of its resolution 52/156 of 15 December 1997, drew the attention of Governments to the importance of having their views on the draft articles and urged them to submit their comments and observations in writing by 1 October 1998.

B. Consideration of the topic at the present session

5. At the present session, the Commission had before it the Special Rapporteur's fourth report 8/ dealing with the second part of the topic, i.e., the question of the nationality of legal persons in relation to the succession of States, which it considered at its 2544th meeting, on 9 June 1998.

6. At its 2530th meeting, on 14 May 1998, the Commission established a Working Group 9/ to consider the question of the possible orientation to be given to the second part of the topic in order to facilitate the Commission's decision on this issue. The preliminary conclusions of the Working Group, which were considered by the Commission at its 2544th meeting, on 9 June 1998, are annexed to this report.

5/ Ibid., Fifty-first session, Supplement No. 10 (A/51/10), para. 88.

6/ Document A/CN.4/480 and Corr.1 (French only) and Add.1 and Corr.1 and Corr.2 (French only).

7/ Official Records of the General Assembly, Fifty-second session, Supplement No. 10 (A/52/10), chap. IV. C.

8/ Document A/CN.4/489.

9/ For the composition of the Working Group, see paragraph ... above.